

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3492 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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ORIENTAL INSURANCE CO.LTD.

Versus

MAHASUKHRAI P PAREKH

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Appearance:

MR KK NAIR for Petitioners

MR SURESH M SHAH for Respondent No. 1

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CORAM : MR.JUSTICE S.M.SONI and

MR.JUSTICE H.R.SHELAT

Date of decision: 06/08/98

#### ORAL JUDGEMENT

In the course of hearing of Civil Application for stay, at the request of the parties' advocates, whole of the First Appeal is finally heard today. Heard the learned advocates for the appellants. Insurance Company, insured and driver have filed this appeal against the judgment and award dated 18th April 1998 in M.A.C. Petition No. 695 of 1987 passed by the Motor Accident

Claims Tribunal (Aux.), Bhavnagar.

2. They have challenged this award contending that it is on the higher side and the Tribunal has not considered the contribution of the claimant in cause of accident. It is contended that the Tribunal has awarded certain damages on some heads in absence of proof of any loss under the same and for others more particularly on the question of pecuniary loss the income is considered on higher side which the Tribunal ought not to have considered.

3. Learned advocate, Mr. Shah appearing for the respondent-original-claimant supports the award contending that it does not call for any interference by this Court.

4. Learned advocate, Mr. Nair appearing for the appellants contended before us that though it is specifically stated by the claimant in his evidence that he has seen the other vehicle coming from opposite side from a distance of 400 feet yet he had not taken necessary care to avert or avoid the accident. If the scooterist-claimant had not taken any care, in our opinion, driver of the other vehicle was not prevented from avoiding the scooter in meeting with the accident with it. It is clear from the Panchnama that the accident took place in the middle of the road. Therefore it can be said that the allegation made by the driver of the other vehicle does not stand good. Even assuming that both the vehicles are equally responsible, then also the question is which Insurance Company shall have to pay. In view of the fact that the insurance companies are nationalised, it should not matter whether 'A' insurance company pays or 'B' insurance company pays. Apart from this, this contention does not appear to have been raised specifically. In the course of the argument the Insurance Company had not examined the driver to support their say. We, therefore, do not interfere with the finding of negligence.

5. On the question of damages, the Tribunal has awarded pecuniary loss on the basis of consideration of future/prospective income of the claimant. In our opinion, in case of injuries when a claim is for permanent disability, the income on the day of the accident is required to be considered. Therefore, the income of the claimant was Rs. 11,000/- on the day of the accident and he had 25% disability of the whole body and the Tribunal has given a multiplier of 5, with which we do not propose to interfere and therefore the

pecuniary loss amount will come to Rs. 1,65,000/-, instead of Rs. 1,95,000/- as calculated by the Tribunal. The amount awarded on different other heads only calls for interference. On damage to scooter and loss in business run by his wife, it is stated at the Bar that the claimant was already paid Rs.10,000/- for damage to scooter by Insurance Company, which, in our opinion, is required to be given credit of. Therefore the claimant is entitled to Rs. 2,000/- towards damage to scooter and also is entitled to Rs. 8,000/- for his leave salary. In our opinion, the claimant will not be entitled to Rs. 2,000/- towards the loss in business of his wife. Thus, except the variation referred above, the award does not call for any modification and the amount, in our opinion, therefore, comes to Rs. 2,66,000/-. Therefore, the following order.

6. The appeal is partly allowed. The appellant shall pay Rs. 2,66,000/- with proportionate costs and interest at the rate of 12 % from the date of the application. The appellant-Insurance Company is directed to deposit the balance of award amount within four weeks from today. On such deposit, the award amount be paid to the claimant, as the claimant is the Bank employee who is aged 43, he knows better how to take care of his money. However, there shall be no order as to costs. Order accordingly. The amount of Rs. 25,000/- deposited in this Court is ordered to be transmitted to the Tribunal forthwith.

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(rmr).

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(R.M. Ravindran)  
Private Secretary  
to the Hon'ble Judge  
High Court of Gujarat  
Ahmedabad